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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/085,345      | 02/28/2002  | W. Wistar Rhoads     | 10961133-8          | 8093             |

7590 05/24/2004

HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
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EXAMINER

HSIEH, SHIH WEN

ART UNIT

PAPER NUMBER

2861

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

|                |                 |               |
|----------------|-----------------|---------------|
|                | Application No. | Applicant(s)  |
|                | 10/085,345      | RHOADS ET AL. |
| Examiner       | Art Unit        |               |
| Shih-wen Hsieh | 2861            |               |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 12 March 2004.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 32-38 and 46-49 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 32-38 and 46-49 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 22 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

***Response to Amendment***

***Double Patenting***

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 32-38 and 46-49 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 32-38 and 46-49 of copending Application No. 09/859,692. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented. Below is a table of comparison between claims of the instant application and co-pending application 09/859,692:

| <b><u>10/085,345</u></b>  | <b><u>09/859,692</u></b>  |
|---|---|
| 32. An inkjet printhead cartridge comprising a container of ink, an area having orifices through which ink is ejected from said container during printing, a reservoir of printhead servicing fluid matched for use with said ink and an applicator for applying a reproducible quantity of said servicing fluid onto a printhead wiper which | 32. An inkjet printhead cartridge comprising a container of ink, an area having orifices through which ink is ejected from said container during printing, a reservoir of printhead servicing fluid matched for use with said ink and an applicator for applying a reproducible quantity of said servicing fluid onto a printhead wiper which |

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|--|--|
| wipes said orifices during relative movement of said printhead and wiper.  | wipes said orifices during relative movement of said printhead and wiper.  |
| 33. The cartridge of claim 32, wherein said servicing fluid is impregnated in a porous material filling said reservoir.  | 33. The cartridge of claim 32, wherein said servicing fluid is impregnated in a porous material filling said reservoir.  |
| 34. The cartridge of claim 33 wherein said applicator comprises a wick in fluid communication with said porous material, said wick having a fluid dispensing surface positioned for applying said fluid to a wiper which subsequently wipes said orifices.                       | 34. The cartridge of claim 33 wherein said applicator comprises a wick in fluid communication with said porous material, said wick having a fluid dispensing surface positioned for applying said fluid to a wiper which subsequently wipes said orifices.                       |
| 35. The cartridge of claim 34, wherein said wick has substantially greater capillary attraction force than said porous material.   | 35. The cartridge of claim 34, wherein said wick has substantially greater capillary attraction force than said porous material.   |
| 36. The cartridge of claim 35, wherein said porous material is an open cell rigid foam block.  | 36. The cartridge of claim 35, wherein said porous material is an open cell rigid foam block.  |
| 37. The cartridge of claim 34, wherein said cartridge is refillable.   | 37. The cartridge of claim 34, wherein said cartridge is refillable.   |
| 38. The cartridge of claim 34, wherein said cartridge is disposable.   | 38. The cartridge of claim 34, wherein said cartridge is disposable.   |
| 46. A method of servicing an inkjet printhead comprising applying a reproducible quantity of servicing fluid to said printhead by causing mutual movement of said printhead and a resilient fluid applicator and wiping said printhead to remove said fluid from said printhead. | 46. A method of servicing an inkjet printhead comprising applying a reproducible quantity of servicing fluid to said printhead by causing mutual movement of said printhead and a resilient fluid applicator and wiping said printhead to remove said fluid from said printhead. |
| 47. The method of claim 46, comprising moving said printhead to engage said applicator.  | 47. The method of claim 46, comprising moving said printhead to engage said applicator.  |
| 48. The method of claim 47, comprising engaging a flexible applicator by contact with said printhead to release said fluid onto said printhead.  | 48. The method of claim 47, comprising engaging a flexible applicator by contact with said printhead to release said fluid onto said printhead.  |
| 49. The method of claim 47, comprising moving a flexible applicator by contact with said printhead to cause said applicator to apply said fluid onto a wiper and moving said printhead with  | 49. The method of claim 47, comprising moving a flexible applicator by contact with said printhead to cause said applicator to apply said fluid onto a wiper and moving said printhead with  |

|   |   |
|---|---|
| respect to said wiper to wipe said printhead. | respect to said wiper to wipe said printhead. |
|---|---|

***Response to Arguments***

3. Applicant's arguments with respect to claims 32-38 and 46-49 have been considered but are moot in view of the new ground(s) of rejection.

After a comparison of claims between the instant application and co-pending application 09/859,692 (allowed on April 7, 2003 does not have a patent number yet), Examiner found that conflict claims are identical as indicated in the table above. A statutory double patenting rejection is therefore set forth in this office action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shih-wen Hsieh whose telephone number is 571-272-2256. The examiner can normally be reached on 7:30AM -5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S D Meier can be reached on 571-272-2149. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

Application/Control Number: 10/085,345  
Art Unit: 2861

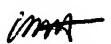
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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**SHIH-WEN HSIEH  
PRIMARY EXAMINER**

  
Shih-wen Hsieh  
Primary Examiner  
Art Unit 2861

SWH

  
May 19, 2004